

PRM EXPLORATION CO.

IBLA 85-262

Decided March 26, 1986

Appeal from a decision of the Oregon State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease OR 24180.

Affirmed.

1. Oil and Gas Leases: Generally--Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Termination

When the lessee fails to pay rental on or before the anniversary date of the lease, and no oil and gas in paying quantities is being produced on the leased premises, the lease automatically terminates by operation of law pursuant to 30 U.S.C. § 188(b) (1982). The Secretary may reinstate the lease, pursuant to 30 U.S.C. § 188(c) (1982), if the full rental is paid within 20 days of the lease anniversary date and the failure to timely pay the rental was justifiable or not due to a lack of reasonable diligence. When the failure to timely pay the rental was due to the lessee's own neglect, the failure to timely pay is neither justifiable nor demonstrative of reasonable diligence, and a petition for reinstatement under 30 U.S.C. § 188(c) (1982) is properly rejected.

2. Oil and Gas Leases: Generally--Oil and Gas Leases: Assignments or Transfers--Oil and Gas Leases: Termination

Under 43 CFR 3108.2-1(b), if the rental payment due under a lease is paid on or before its anniversary date but the amount of the payment is deficient and the deficiency is nominal, the lease shall not automatically have terminated unless the lessee fails to pay the deficiency within the period prescribed in a notice of deficiency required to be sent by BLM.

3. Oil and Gas Leases: Generally--Oil and Gas Leases: Assignments or Transfers

An assignment of an oil and gas lease is ineffective until the proposed assignment has been approved by BLM. 30 U.S.C. § 187a (1982). Until such time as the assignment is approved, the party designated as the

party responsible for payment of lease rentals on the lease to be assigned remains responsible for rental payments.

APPEARANCES: Russell W. Holman, Dallas, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

PRM Exploration Company (PRM) appeals from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated December 7, 1984, denying its petition for reinstatement of oil and gas lease OR 24180.

Oil and gas lease OR 24180 was issued effective August 1, 1981. An assignment which was approved effective November 1, 1981, transferred the lease to May Petroleum, Inc. (undivided 50-percent interest), PRM (undivided 25-percent interest), and British Exploration Company (undivided 25-percent interest). The assignment document provided that May Petroleum, Inc. (May Petroleum) would be responsible for rental payments.

The lease provided for advance payment of annual rentals of \$ 1 per acre (Lease Terms, section 1(d)), which were due on or before the anniversary date (Lease Terms, section 1(e)). Rentals were due August 1, 1984.

On July 15, 1984, the following delay rental checks were mailed to the Minerals Management Service (BRASS) 1/ by PRM:

<u>Named Payor</u>		<u>Check No.</u>	<u>Amount</u>
PRM Exploration Company		#585	\$ 1,423.50
British Exploration Company	#348	818.57	
P.C.O. Leases, Inc.	#329	613.93	

The above three checks were received by the Minerals Management Service (MMS) on July 18, 1984. However, check No. 585 was in error, being made in the amount of \$ 1,423.50 instead of \$ 1,432.50, an obvious typographical error.

On July 16, 1984, May Petroleum assigned its 50-percent interest in the lease to PRM (25 percent), British Exploration Company (14.2857 percent), and P.C.O. Leases, Inc. (10.7143 percent). These assignments were received by the Oregon BLM office on August 20, 1984. PRM received an acknowledgement of Receipt and Accounting Advice from the Oregon BLM office dated August 20, 1984, noting payment of the assignment fee. This assignment resulted in the latter three parties having undivided interests in the property equivalent to those reflected in the checks mailed by PRM on July 15, 1984. However, the assignment had not been approved by BLM.

Although the record does not contain a copy of the document, it indicates that a Notice of Deficiency was sent to May Petroleum on October 2, 1984. Notations on the return receipt card state the notice was received by

1/ Bonus and Rental Accounting Support System.

May Petroleum on October 6, 1984. 2/ A BLM telephone conversation report, dated November 9, 1984, states:

After checking with MMS re nonpayment of nominal deficiency from August payment, I called May Petroleum to verify if it had been sent. Was told there was no record in their office but she would check with PRM et al. 3 days later I received a call from PRM. She said the deficiency was due to a typo that transposed figures. I explained the process of the Nominal Deficiency notice sent to May which allowed 15 days from receipt to submit add[ition]al \$ 9.00. No remittance has been received. Lease terminated.

According to PRM, it first learned of the deficiency when a telephone call was received from May Petroleum on November 12, 1984, reporting on a call from BLM. This call from May Petroleum was to advise PRM that the lease would be terminated unless the \$ 9 deficiency had been sent, and subsequently held up in the mail. PRM remitted the \$ 9 which was received on November 19, 1984.

On November 27, 1984, PRM received an Oil and Gas Lease Termination Notice from the Oregon BLM office, dated November 21, 1984.

PRM filed a Petition for a Class I Reinstatement dated November 28, 1984. 3/ On December 14, 1984, PRM received a decision from the BLM Oregon office, dated December 7, 1984, advising that the petition was denied. The decision stated in part:

Under the terms of oil and gas lease OR 24180, a full rental payment of \$ 2,865.00 was due on August 1, 1984, the anniversary date of the lease. The remittance received by Minerals Management Service (BRASS) totalled \$ 2,856.00 and was determined to be a nominally deficient payment as defined at 43 CFR 3108.2-1(b).

2/ The card and the receipt both contain a handwritten notation that the item enclosed was a nominally deficient notice. However the handwriting differs from that on the receipt, and the return receipt card was typed. The handwriting appears to be the same as that on a memorandum forwarding the card and receipt to BLM, dated Nov. 14, 1984.

3/ The lease termination notice outlined the Class I Reinstatement conditions as follows:

"PUBLIC LAW 91-245 (A Class I Reinstatement) Pursuant to the provisions of Public Law 91-245 (30 U.S.C. 188(c)) and Title 43 Code of Federal Regulations section 3108.2-1(c) you have a right to petition for reinstatement of the lease. Under these provisions the right of reinstatement is subject to the following conditions and procedures:

"(1) That a new oil and gas lease has not been issued for any of the lands affected by the terminated lease;

"(2) That it is shown to the satisfaction of the authorized officer that failure to pay was either justifiable or not due to lack of reasonable diligence;

In accordance with regulations, a Notice of Deficiency was sent to the billee, May Petroleum, Inc., as the designated service office which allowed 15 days from receipt to remit the \$ 9.00 balance of payment due. The return receipt card was signed with the date of delivery shown as October 6, 1984. A remittance of \$ 9.00 was received in this office on November 21, 1984, after the lease had terminated by operation of law.

This office is without authority to reinstate the lease as a Class I reinstatement because full payment was not made timely. Therefore, your petition for reinstatement pursuant to 30 U.S.C. 188(d) [sic] is denied.

In the statement of reasons PRM states the decision is adverse to PRM and PRM considers it incorrect. In support of its contention, PRM states that the delay rental was deficient by \$ 9 due to a typographical error on one of its checks. Notwithstanding the fact that BLM was notified of the transfer of May Petroleum's interest in August 1984 the notice of deficiency was sent to a corporation which no longer had any interest in the lease. As a result, PRM contends it first learned of the deficiency on November 12, 1984, and was denied the opportunity to remit the deficiency in the time limit allowed. Finally, PRM states:

The Bureau of Land Management erred in failing to notify PRM of the deficiency; therefore, PRM should not be penalized by loss of the lease, since the failure to remit the deficiency in the limited time allowed was not due to any negligence on the part of PRM, but was caused by the failure of the Bureau of Land Management to send the Notice of Deficiency to PRM, the owner of the lease and the payor of the delay rental.

[1] A class I reinstatement is authorized by 30 U.S.C. § 188(c) (1982), and is governed by 43 CFR 3108.2-2(a), which provides:

(a) Except as hereinafter provided, the authorized officer may reinstate a lease which has terminated for failure to pay on

fn. 3 (continued)

"(3) That rental due was paid or tendered within 20 days of the anniversary date of the lease; and,

"(4) That a petition for reinstatement is filed with this office within 60 days after receipt of this Notice, along with a nonrefundable filing fee of \$ 25.00 and any required rental, including any back rental which has accrued from the termination date of this lease." [Emphasis added.]

PRM did not request a class II reinstatement or submit the fees or rental payment of \$ 5 per acre as required for class II reinstatement. The lease termination notice stated that "[f]iling a petition for class I Reinstatement DOES NOT STOP the running of the 60 days from receipt of this Notice to file a class II Reinstatement." (Emphasis in original.) A class II reinstatement cannot be considered.

or before the anniversary date the full amount of rental due, provided that:

(1) Such rental was paid or tendered within 20 days after the anniversary date; and

(2) It is shown to the satisfaction of the authorized officer that the failure to timely submit the full amount of the rental due was either justified or not due to a lack of reasonable diligence on the part of the lessee; and

(3) A petition for reinstatement, together with a nonrefundable filing fee of \$ 25 and the required rental, including any back rental which has accrued from the date of the termination of the lease, is filed with the proper BLM office within 60 days after receipt of Notice of Termination of Lease due to late payment of rental.

The regulation further provides: "The burden of showing that the failure to pay on or before the anniversary date was justified or not due to lack of reasonable diligence shall be on the lessee." 43 CFR 3108.2-2(b). E.g., Leo M. Krenzler, 82 IBLA 205, 207 (1984); Arthur F. Hovey, 79 IBLA 148, 149 (1984). If the lessee has paid the full rental within 20 days after the lease anniversary date, and the lessee shows that the failure to pay on or before the anniversary date was justifiable or not due to a lack of reasonable diligence, the Department may, under certain circumstances, reinstate the lease, pursuant to 30 U.S.C. § 188(c) (1982) and 43 CFR 3108.2-2. E.g., Leo M. Krenzler, supra; Kay Fink, 81 IBLA 381, 382 (1984); Arthur M. Solender, 79 IBLA 70, 72 (1984).

When the failure to pay the anniversary rental on time is due to negligence, forgetfulness, or inadvertence, the failure is not justifiable. Leo M. Krenzler, supra at 209; Eleanor L. M. Dubey, 76 IBLA 177, 179 (1983). Late payment of an annual rental may be considered justifiable if the untimeliness was proximately caused by circumstances outside the lessee's control at or near the anniversary date of the lease, Leo M. Krenzler, supra at 207; William F. Branscome, 81 IBLA 235, 237 (1984). Here the untimeliness was clearly within PRM's control. The stated reason for the failure to submit the full rental in a timely manner was "due to a typographic error on one of its checks," a mistake clearly within lessee's control.

[2, 3] Under 43 CFR 3108.2-1(b), however, if the rental payment due under a lease is paid on or before its anniversary date but the amount of the payment is deficient and the deficiency is nominal, the lease shall not automatically terminate unless the lessee fails to pay the deficiency within the period prescribed in a notice of deficiency sent by BLM. ^{4/} The case

^{4/} The regulation further states that "[a] deficiency shall be considered nominal if it is not more than \$ 100 or more than 5 percent of the total payment due, whichever is less. The authorized officer or the designated Service office, as appropriate, shall send a Notice of Deficiency to the lessee. The Notice shall be sent by certified mail, return receipt requested, and

file contains a return receipt card showing service of a nominally deficient rental notice on May Petroleum effective October 6, 1984.

A confirmation/report of telephone conversation between May Petroleum and a BLM employee notes that BLM called May Petroleum to verify if a nominal deficiency notice had been sent. In the petition for a class I reinstatement PRM states that on November 12, 1984, May Petroleum notified PRM that BLM had called May Petroleum to notify them of the \$ 9 delay rental deficiency. The BLM decision which denied reinstatement states "[a] remittance of \$ 9.00 was received in this office on November 21, 1984 * * *."

The statutory provision governing assignments, 30 U.S.C. § 187a (1982), states that until approval of an assignment, "the assignor or sublessor and his surety shall continue to be responsible for the performance of any and all obligations as if no assignment or sublease had been executed." The assignment document executed by all parties on October 26, 1981, and approved by BLM on February 3, 1982, states specifically that "MAY PETROLEUM INC. will be responsible for rental payments." (Emphasis in original.)

Having set forth the facts and applicable law we now turn to the task of determining how the law is applied to the facts of this case. Because the full rental payment was not made on or before the anniversary date of the lease, the lease would have automatically terminated by operation of law pursuant to 30 U.S.C. § 188(b) (1982), but for the application of 43 CFR 3108.2-1(b), which addresses the procedure for nominally deficient payments. Under 43 CFR 3108.2-1(b), a lease will not automatically terminate if a lessee pays the deficiency within the period prescribed in a deficiency notice. May Petroleum was responsible for payment of rentals. The rental payment was nominally deficient. Notice of the deficiency was sent to May Petroleum, who failed to make payment within the prescribed time. On October 21, 1984, the lease terminated effective August 1, 1984, the anniversary date. 43 CFR 3108.2-1(b).

The deficiency payment was made on November 12, 1984. The provisions of 43 CFR 3108.2-2(a)(1) require the rental be "paid or tendered within 20 days after the anniversary date," if a Class I reinstatement is to be granted. The payment by PRM was not within 20 days of the anniversary date of the lease. 5/ Thus, a Class I reinstatement cannot be extended to PRM. The BLM decision must therefore be affirmed.

fn. 4 (continued)

shall allow the lessee 15 days from the date of receipt or until the due date, whichever is later, to submit the full balance due to the proper BLM office or the Service, as appropriate. If the payment required by the Notice is not paid within the time allowed, the lease shall have terminated by operation of law as of its anniversary date."

5/ Payment was not made within 20 days of the date of receipt of the deficiency notice and the lease expired pursuant to 43 CFR 3108.2-1(b). Consequently, an argument that the anniversary date was somehow extended by this regulation would afford no relief to PRM.

We recognize PRM may continue in its belief that this result is harsh, considering the circumstances of this case. We are mindful of the provisions of 43 CFR 4.401(b), which is applicable to the proceedings before this Board. Under 43 CFR 4.401(b), if a notice of assignment is filed in the proper BLM office, an assignee is entitled to notice of proceedings thereafter initiated which would affect the interest of the assignee. Unfortunately, there are no comparable provisions applicable to BLM. We have little doubt that, if a copy of the deficiency notice had been sent to PRM (as assignee of May Petroleum's interest), this case would not be before this Board. The initial, but nominally deficient rental payment was made by PRM, not May Petroleum, and a notice of assignment of 100 percent of May Petroleum's interest to PRM and others had been filed a full month and a half before the deficiency notice was sent to May Petroleum. However, in spite of the fact BLM did not send a copy of the deficiency notice to PRM, BLM acted within the minimum standards prescribed by law, and this Board has no basis for ignoring the legal requirements for reinstatement, regardless of the obvious equitable considerations.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Will A. Irwin
Administrative Judge

